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In The

Supreme Court of the United States

October Term, 1944.

No. .....

STANDARD LIME AND STONE COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

OPINIONS BELOW.

The opinion of the Court below, filed May 11, 1945, is not yet reported, but is included in the record (R. 45). The decision and order of the National Labor Relations Board, dated July 13, 1944, is included in the record at R. 1-17.

GROUNDS FOR JURISDICTION.

Jurisdiction is invoked under Sec. 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43

Stat. 938 [28 U. S. C., Sec. 347 (a)], as authorized by Sec. 10 (e) of the National Labor Relations Act [49 Stat. 449, 29 U. S. C., Sec. 160 (e)].

The opinion of the Circuit Court of Appeals for the Fourth Circuit was filed May 11, 1945; its order or decree was entered May 11, 1945. Application for a stay pending application in this Court for writ of certiorari was made May 22, 1945, and the order granting the stay for 30 days pending the application for writ of certiorari in this Court was entered May 24, 1945.

A concise statement of the grounds on which the jurisdiction of this Court is invoked is contained in the Petition at pp. 5-8, reference to which is hereby respectfully made.

STATEMENT OF THE CASE.

A concise statement of the case is included in the Petition at pp. 3-5, reference to which is hereby respectfully made.

SPECIFICATIONS OF ERRORS.

The decision of the Circuit Court below was that the certification by the National Labor Relations Board of the United Cement, Lime and Gypsum Workers International Union, A. F. of L., as the exclusive bargaining agent of Petitioner's employees was lawful and proper, so that the Board's later order directing Petitioner to bargain collectively with the A. F. of L. should be enforced. In so holding, the Circuit Court made the following errors hereby urged:

1. The Circuit Court erroneously held that Sec. 9 (a) of the National Labor Relations Act [29 U. S. C., Sec. 159 (a)], providing that "Representatives designated or selected * * * by the majority of the employees * * * shall

be the exclusive representatives of all the employees," permits the Board to certify a union as exclusive bargaining agent when at the election held by the Board less than a majority of the employees cast ballots or participated in the election.

2. The Circuit Court erroneously held that the Board can certify solely on the basis of the majority vote of the minority participating in the election, and need not have before it any additional evidence upon which to base a finding that the minority vote was, in fact, truly representative.

3. The Circuit Court erroneously held that where the Board holds an election with each of two unions and "Neither" on the ballot, with the result that neither of the unions nor "Neither" receives a majority of the votes cast, with "Neither" running third; and the Board eliminates "Neither" from the ballot and holds a so called "run off' 'election between the two unions, the Board's elimination of "Neither" from the ballot does not invalidate the second election, or the Board's certification of the union based thereon.

SUMMARY OF ARGUMENT.

The statutory language to be construed is "Representatives designated or selected * * * by the majority of the employees * * * ". NLRA, Sec. 9 (a), 26 U. S. C. Sec. 159 (a). The key words in the statute are "designated or selected". Clearly a majority has not "designated or selected" when a majority has not even participated.

The employee's position in a labor election is more analogous to that of a corporate stockholder than a political voter; the number entitled to vote is definitely known; the employee's direct personal and property interests are affected; and the corporate rule in most instances of

majority participation, and not the political rule, should be adopted here.

Admittedly, it can be argued that the earlier Railway Labor Act, providing that the majority "shall have the right to determine" the representative, requires only that the opportunity be afforded; and that holding an election at which all have the right to vote if they want, satisfies the RLA provision. But the NLRA clause now before the Court is "designated or selected". That phraseology requires affirmative action. Certainly a majority has not "designated or selected" when a majority has not even participated.

The Circuit Court below, arbitrarily and without any basis for so doing, held that this Court's decision in *Virginian Railway v. System Federation,* 84 F. (2d) 641 (C. C. A. 4th 1936), *aff'd.,* 300 U. S. 515 (1937), was the "conclusive answer" in the case now presented.

But this Court did not hold in the *Virginian* case that under the election provision of the earlier Railway Labor Act, a majority vote of the minority participating in the election can elect. *There, a majority participated.* If that had been the holding, that case would not control as to NLRA elections for the reason, among others, that the two election provisions are differently worded, the committee reports thereon show a differing Congressional intent, and the 1934 RLA provision was copied *verbatim* from a then existing rule of the U. S. Labor Board which had already been construed by the Board to adopt a minority participation rule. This latter fact was stressed by this Court in its construction of the RLA in the *Virginian* case.

Hence, the proper construction of the RLA and the NLRA election provisions are two separate and distinct questions: the *Virginian Railway* case and other court decisions construing the RLA are not binding precedents on the NLRA.

Only three court decisions construing the NLRA election provision have involved a minority participation in the vote. In each of those cases, the Board was required to have before it in addition to the election tally evidence upon which to base a finding that the small participation therein was nevertheless actually representative. But in *Standard's* case, there is not a shred of evidence in the record to justify such a finding. The fact that the second election again resulted in a minority turnout was affirmative evidence that the vote was not representative.

By eliminating "Neither" from the ballot at the second election, the Board made a decision for the employees which the employees were there to decide for themselves, and which, as a part of any fair election process, should have been submitted to the employees.

The Board's elimination of "Neither" from the ballot disregarded the fact that, because of an elected union's power by a closed shop agreement to force members of a rival union to change affiliation, supporters of one union might very well prefer to vote for no union than to risk the election of a rival union. The employees should have been permitted to decide at the ballot box whether they preferred "Neither" to a run off vote later between the two unions. The statute contemplates an election by the employees, not an election partly by the Board.

ARGUMENT.

I.

Section 9 (a) Requires A Majority Participation.

Section 9(a) of the National Labor Relations Act provides:

> "Representatives designated or selected * * * by the majority of the employees * * * shall be the exclusive representative of all the employees" etc.
> 29 USC, Sec. 159 (a).

Section 9(c) of the Act further provides that if a controversy arises on the question of representation, the Board,

> "* * * may investigate such controversy and certify * * * the representatives that have been designated or selected. In any such investigation, the Board * * * may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives".
>
> 29 USC, Sec. 159 (c).

The statute says that the exclusive bargaining agent shall be "designated or selected * * * by the majority of the employees". Whether determined by "secret ballot" or "other suitable method" as authorized by Section 9(c), the statutory mandate is "designated or selected * * * by a majority of the employees". We say that *if* the statute does not require a majority vote of all those entitled to vote to elect, the least it requires is majority participation in the vote. The key words in the statute are "designated or selected". Clearly a majority has not "designated or selected" when a majority has not even participated.

By holding that mere minority participation satisfies the statute, the Circuit Court below necessarily inserted additional words into the statute; making the statute read:

> "* * * designated or selected * * * by the majority of the employees *who actually voted*" (Italicized words added).

But the words used by Congress have a perfectly reasonable and clear meaning without adding to them.

Webster's Dictionary defines the word "designate" as meaning "to indicate, show, to name, to set apart", and the word "select" as meaning "to pick out, choose, to take instead of others, as to select a book".

We say that the very language of the Act requires the affirmative action of employees, and not their mere passive acquiescence, and that the words used in the Act should be given by the Board and Courts their normal meaning unless there is clear and positive evidence that the Congressional intent was otherwise.

The Courts in construing other language of this Act have applied the normal meaning to the words used.

See NLRB vs. Swank Products Co., 108 Fed. (2) 872 (CCA 3d, 1939).

In the above case the Court said, in discussing other words used in this Act (see p. 874)—

> "acquiescence has none of the positive and aggressive quality contemplated by such words as 'interfere', 'restrain', 'coerce' and 'dominate' which we find in the Act".

Applying the Court's reasoning in the above case we say that the words "designate" or "select" require positive and affirmative acts; and that the NLRB and the Circuit Court below erred in determining that mere passive acquiescence meets the requirements under this langauge in the Act.

Consider also the voting rules in other situations:

Majority participation is the general rule not only in parliamentary and legislative bodies, but in the election and management proceedings of corporations as well.

13 Am. Jur., Corporations, Secs. 480, 960.

Sec. 480 reads:

> "In most instances it will be found that the question as to what constitutes a quorum for the purpose of transacting business at stockholders' meetings is governed by statute or by rules and regulations of the corporation, * * *."

And Mr. Thompson says:

> "This question of the quorum at a stockholders' meeting is now settled almost universally by statute. * * * Statutes usually require a representation of a majority of all the stock to constitute a quorum * * *."
>
> 2 Thompson, Corporations (1927), Sec. 940.

In the case of political elections, usually only minority participation is required. But, as illustrated by the case of *Carroll County v. Smith*, 111 U. S. 556 (1884), this is often because the statute expressly so provides: in that case, the statute referred to "two-thirds of the qualified voters," and the Court said (at p. 565) that "voters" could not include a person who did not actually vote. The adoption of minority participation as the rule in political elections is practically forced by the impossibility of determining definitely the actual number entitled to vote (death, changes of residence, etc.).

We submit that the employees' position in a labor election is more analogous to that of a corporate stockholder than a political voter. In labor elections the total entitled to vote is definitely known; they are current employees on the pay roll, their names are posted on an eligibility list throughout the plant. Unlike the political voter, and like the stockholder, the employees' direct personal and property interests are involved in the vote, because the elected labor representative is the exclusive bargaining agent for all as to wages, hours, and working conditions.

We submit as unsound the Circuit Court's decision that the NLRA election provision should be construed to adopt the political rule, or the archaic common law corporate rule which long before the NLRA was universally outmoded by the modern statutory "quorum" rule.

The Circuit Court below justifies its minority participation views by saying that a sole bargaining representative is chosen, not—

> "for the employees in their private and personal capacities, but * * * to represent a constituency because it is in the public interest that the constituency be represented; * * *."

The Circuit Court cited NLRA, Sec. 1 (29 U. S. C. Sec. 151) as declaring this policy of obtaining a bargaining agent in any event, without regard to the employees' personal interest. But nothing in Sec. 1 minimizes the direct personal and property interest of the employees in the vote; in fact, when Sec. 1 refers to "the right of employees to organize," "full freedom of association," "protection by law of the right of employees to organize," "full freedom of association, self organization and designation of representatives of their own choosing," certainly the Act is putting the workers' interest first.

In the case of *NLRB vs. Whittier Mills,* 111 Fed. (2) 474 (C. C. A. 5th, 1940), the Court laid down the following rule (see pp. 477-8)—

> "Where with fair opportunity to all members of the unit to vote, a majority do vote, they are, so to speak, a quorum to settle the matter, and the majority of that quorum binds those not voting and suffices to select the bargaining representatives of the unit".

We, therefore, submit that Section 9(a) requires a majority participation.

The Railway Labor Act and Cases Thereunder.

Both the Board and the Circuit Court below thought (1) that Congress, when Section 9(a) of the National Labor Relations Act became law in 1935, in effect incorporated into the National Labor Relations Act the election provision of the prior Railway Labor Act; and (2) that the decision under the latter Act in the *Virginian Railway*

case settled the question in favor of mere minority participation.

We submit that the election provisions of the two statutes have different meaning; as shown by the different wording of the statutes and the differing Congressional Committee reports thereon:

The Two Statutes Compared: The Railway Labor Act provision is that,

> "• • • the majority • • • of employees shall have the right to determine who shall be the representative • • • ".
>
> Railway Labor Act, Sec. 2, Fourth
> 45 USC, Sec. 152, Fourth.

But that is very different language from the National Labor Relations Act's wording, as follows:

> "representatives designated or selected • • • by the majority of the employees • • • ".
>
> National Labor Relations Act, Sec. 9 (a).
> 29 USC, Sec. 159 (a).

Admittedly it can be argued that the RLA phraseology that the majority "shall have the right to determine," requires only that the opportunity be afforded; and that holding an election at which all have the right to vote if they want, satisfies the RLA provision.

Not so in the case of the NLRA now before the Court: "designated or selected" is the clause. We say that the phraseology of the National Labor Relations Act requires affirmative action to "designate or select". Certainly a "majority of the employees" has *not* "designated or selected" where a majority has not even participated.

Congressional Committee Reports: A committee report on the 1934 amendment to RLA, Sec. 2, described that Section—

"'the bill specifically provides that the choice of representatives in any craft shall be determined *by a majority of the employees voting on the question*' (Italics supplied)."

Report (No. 1065) of Committee on Interstate Commerce to accompany S. 3266, May 10, 1934, 73d Congress, 2d Sess., p. 2.

But what has that to do with the differently worded NLRA Sec. 9(a), passed in 1935, which was accompanied by its own Committee Report, also differently worded:

"Section 9 (a) incorporates the majority rule principle, that representatives designated for the purpose of collecting bargaining by the majority of the employees in the appropriate unit shall be the exclusive representatives of all the employees" etc.

Report (No. 1147) of the House Committee on Labor to accompany S. 1958, June 10, 1935, 74th Cong., 1st Sess., p. 19.

The Circuit Court below said this last quoted NLRA Committee Report "expressly stated" that NLRA Sec. 9 (a) was intended to adopt a minority participation rule. The only explanation of this manifest error must be that the Circuit Court confused in its mind the NLRA Committee Report and the RLA Committee Report.

If Section 9 (a) of NLRA had been intended to mean the same as Section 2 of RLA, the normal course would have been to copy Section 2. But the statutes and the Committee Reports used different language.

With the above in mind, the fact that the NLRA Committee Report stated that Act to be "an amplification and further clarification of the principles" of the RLA could hardly mean that one Act is the replica of the other; "amplification" implies change.

The Virginian Railway Case: In spite of the different wording of the two election provisions, the Circuit Court below nevertheless held that this Court's decision in *Virginian Railway v. System Federation,* 84 F. (2d) 641 (CCA 4th, 1936), aff'd. 300 U. S. 515 (1937) was the "conclusive answer" in the case now presented. But that case is not controlling here:

1. There, *a majority* of those entitled to vote had participated in the RLA election. Both this Court and the Circuit Court reserved any decision on the question of mere minority participation.

2. Reasons given by this Court (at pp. 560-1) and by the Circuit Court (at pp. 652-3) for adopting the political rule are inapplicable here:

(a) This Court said "an indifferent minority" (those not voting) should not prevent an election. The Circuit Court had expressed the same idea that "elections must frequently fail" if a majority vote (as distinguished from mere majority participation) were required.

Here, this Court's "indifferent minority" is a majority. And with only majority *participation* required, the failure of elections from non-participation will be relatively infrequent. Normally, 80% of all employees eligible to vote in Board elections actually cast ballots. See Ninth Annual Report of the NLRB (G. P. O. 1944) 19; Eighth Annual Report of the NLRB (G. P. O. 1943) 24.

(b) This Court referred to the danger of "the absence of eligible voters" due to "coercion by the employer". The Circuit Court having shown at p. 643 that the Company had done its best to keep the employees from voting, had expressed the same thought in saying

the election might be nullified "where the employer, as in the case at bar, is opposed to change".

But in Standard's case, there was no absence of voters due "to coercion by the employer", or because "the employer was opposed to change". On the contrary, Standard Lime's cooperation in holding a fair election was so complete that the record includes the Board's stipulation to that effect (R. 10, 20-3).

(c) This Court had a reason not used by the Circuit Court; if found Congressional intent in the fact that the 1934 RLA provision had been copied *verbatim* from a then existing rule of the U. S. Labor Board; which rule, prior to the 1934 RLA amendment, had been construed by the Board to adopt the political rule. But the NLRA provision now before the Court uses language entirely different from the Labor Board rule and the RLA provision; Court decisions construing one are not binding precedents on the other.

(d) The Circuit Court had a reason not used by this Court:

> "* * * If the employees are already represented, the failure to vote will be a vote against change; * * *"

Here, the employees were not already represented. Prior to the elections, the Independent had voluntarily withdrawn as representative (R. 29).

The *Virginian Railway* case actually held against minority participation. The decision by the District Court in the *Virginian Railway* case, 11 Fed. Sup. 621, 628 (E. D. Va. 1935), as to the car men and coach cleaners (craft election) held that under the RLA, as a majority did not participate, a valid certification in this craft could not be made. This ruling was not appealed.

The National Labor Relations Act and Cases Thereunder.

The Circuit Court below cited the following court decisions as holding that, under Sec. 9 (a) of NLRA, a majority of a minority can elect:

New York Handkerchief Mfg. Co. vs. N. L. R. B., 114 Fed. (2) 144 (CCA 7th, 1940);
N. L. R. B. vs. National Mineral Co., 134 Fed. (2) 424 (CCA 7th, 1943);
Whittier Mills Co. vs. N. L. R. B., 111 Fed. (2) 474 (CCA 5th, 1940);
Marlin-Rockwell Corp. vs. N. L. R. B., 116 Fed. (2) 586 (CCA 2d, 1941);
N. L. R. B. vs. Central Dispensary and Emergency Hospital 145 Fed. (2) 8521 (Ct. of App. D. of C. 1944).

In the *New York Handkerchief Company* case the Court affirmed the Board's certification where less than a majority participated, and the Court, page 148, held:

> "The authority of the Board to certify the Union under such circumstances presents an important question not free from doubt. In this connection it must be kept in mind that we have sustained the Board's finding to the effect that petitioner was guilty of coercion and intimidation against its employees, which no doubt prevented many of them from participation in the election."

In the *National Mineral* case the Board found, and the Court affirmed its finding, page 428, that:

> "The Company's conduct was an interference with the election and was responsible for the small number voting."

and the Court further said,

> "In the instant case as found by the Board, petitioner by its unlawful conduct interfered with the

> right of its employees to participate in the election and, no doubt, was responsible for the small proportion of its employees voting."

To the contrary in the Standard's case, the Company cooperated with the Board in all respects in holding both elections. The Report of the Trial Examiner states,

> "The pleadings contain no allegation of irregularity in the conduct of the election * * *." (R. 8.)

Standard's cooperation was so complete that the record includes the following stipulation by the Board:

> "Respondent cooperated with the Board in holding said election by furnishing its pay-roll list, provided a room in its plant for said election, furnishing voting booths, one of its employees to act as an authorized observer, and posting the notices on the bulletin boards throughout the plant in reference to said election as requested by the Board." (R. 22.)

The Board made substantially the same stipulation as to the first election (R. 20).

In the *Whittier Mills* case, a majority of employees voted in each election, and the point in issue was whether a certification was valid when based on the affirmative act of less than a majority, when a majority participated. The Court held (see pp. 477-8)—

> "Where with fair opportunity to all members of the unit to vote, a majority do vote they are, so to speak, a quorum to settle the matter, and the majority of that quorum binds those not voting and suffices to select the bargaining representative of the unit."

This case affirms our contention.

In the *Marlin-Rockwell Corporation* case a majority participated in the election, and the issue was whether

under the Act a majority of all in the appropriate unit must vote for the union. The Court, page 588, held,

> "Under the Railway Labor Act it has been authoritatively held that the vote by a majority of the participants determines the choice if the election was participated in by a majority of employees entitled to vote" (citing Virginia Railway and Whittier Mills cases).

The *Emergency Hospital* case, decided by the Circuit Court of Appeals for the District of Columbia in 1944, was a case in which less than a majority participated. In this case the Board, as appears from its decision, conducted an independent investigation following the balloting, to ascertain whether the election was fair and representative. It found that it was; one of its reasons being (see 46 NLRB 437, 438)—

> "Moreover, the Board's investigation in this matter has disclosed, as the record indicates, that the Hospital has a high rate of turnover, so that a substantial number of those whose names appeared upon the pay roll used to determine eligibility to vote in the election were no longer employed by the Hospital at the time of the election. * * * "

This condition should be contrasted with the normal employment condition stipulated in *Standard's* case—

> "that on April 13, 1943, and May 13, 1943, the days of the election at respondent's plant, the operations at said plant were normal with respect to number of employees working at said plant, and that the notices posted throughout the plant were ample to give notice to employees of the time and place of holding said election." (R. 25.)

On the above set of facts, which are quite different from the facts in the Standard case, the Court, in the *Emergency Hospital* case, held (see p. 854):

> "The real test is whether the election is actually representative. This is always a question of fact in the particular case. The Board has recognized this principle by an administrative ruling that in minority elections *it will investigate and determine whether the election was actually representative. It did so in this case and affirmatively found that the election was representative.*" (Italics ours.)

Thus, it appears that in the only three Court decisions involving a minority participation in the vote, i. e., the *New York Handkerchief Co.* case, the *National Mineral* case, and the *Emergency Hospital* case, the courts all qualified their approval of union certification by the Board.

The Board was required to have before it in addition to the election tally evidence upon which to base a finding that the small participation therein was nevertheless actually representative. In the *New York Handkerchief Co.* case and the *National Mineral* case, the requisite additional evidence was the employer's interference with the election, tending to prevent employees from voting; and in the *Emergency Hospital* case, the high rate of turnover among the employees between the pay-roll date for determining eligible voters and the election date made it probable that those participating in the election were actually a majority of those then entitled to vote.

Now, if minority participation should ever be sanctioned, it should not be in Standard's case. The only "investigation" by the Board was to count the vote. There is not a shred of evidence in the record to justify a finding that the minority vote was actually representative of the wishes of a majority of employees.

The record contains the Board's stipulation that the Company, far from interfering or coercing, cooperated in every way to obtain a fair election (R. 10, 20-23). There is no evidence of abnormal turnover of employees

(R. 25). There was no investigation conducted by the Board, and the record is entirely silent in this case of any such investigation having been conducted for the purpose of determining whether the vote was actually representative. There was no evidence before the Board tending to show that any one who wanted A. F. of L. representation had not voted for it. Indeed, the second election again resulting in a minority turnout was affirmative evidence that the vote was not representative.

The fact is that the Board, with nothing but the minority vote before it, with no additional investigation, and with no evidence from which to conclude that the minority election showed the wishes of the majority, certified the union as the sole bargaining agent for all.

Without the "investigation" required by the *Hospital* case, the Board violated the mandate in that case and in the *New York Handkerchief Co.* case that its authority to certify representatives in minority elections "must not be employed arbitrarily". Acting upon no evidence at all is the clearest case of arbitrary action.

The Board's Elimination of "Neither" From the Ballot.

When the Board eliminated "Neither" from the ballot it was not exercising an "administrative discretion". It thereby made a decision for the employees which, as a part of any fair election process should have been determined by the voters themselves. The Board had no right to strike "Neither" from the ballot and thus disregard the three-cornered antagonism generally found between the supporters of rival unions and no unions. Union members know that with sole bargaining power in a rival union's hands they might later be forced, by a closed shop agreement, to change their affiliation, and non-union members know that they might be forced by a

closed shop agreement to join a union which they have consistently refused to join. Supporters of one union might very well prefer to vote for no union than to risk the election of a rival union. There is no way of telling what vote "Neither" would have polled if it had been on the ballot at the second election.

With both the ballot box and the employees available, what they desired on this score was not a matter for the "considered judgment" of the Board. The employees were there to decide that issue for themselves. They should have been permitted to decide at the ballot box whether they preferred "Neither" to a run-off vote later between the two unions. Successive "run off" elections are common Board practice. See *Fairchild Engine & Airplane Corp.*, 31 NLRB No. 137, 32 NLRB No. 99, 33 NLRB No. 83 (1941); *Aluminum Co. of America*, 12 NLRB 237 (1939).

In short, the statute contemplates a designation or selection of the sole bargaining agent by the ballot of the employees, if an election is held, and not partly by such ballot and partly by the election of the Board.

Similar action by the Board was held illegal by the Sixth Circuit in *NLRB vs. International Brotherhood*, 105 Fed. (2) 598 (CCA 6th, 1939), revd. on other gr. 308 U. S. 413 (1940). There, practically all the employees voted in the first election. The CIO nosed out the AFL, but in view of the "Neither" vote, neither union received a majority. The Board decided the next step itself, instead of submitting it to the voters. It struck one of the two contesting unions from the ballot. The Court said:

> "* * * We think the order was illegal and that the proposed election was unfair in effect. It was in the teeth of the policy formulated in the statute, that the employees should be protected in the exercise of full freedom of designation of representatives of their own choosing. The employee was not given full freedom of choice * * *."

See also—

International Brotherhood vs. N. L. R. B., 41 Fed. Supp. 57, 59 (E. D. Mich. 1940):

("Such so-called run-off election is in legal contemplation a new election.")

In eliminating "Neither," the Board disfranchised all those who would have voted "Neither". And worse than that, it treated them as actually voting for the leading union. The Board which has disfranchised this group of employees, has said,

> "We will count all who do not vote as voting for the union that receives the larger number of votes in the run-off election."

This action of the Board cannot be justified because Section 1 of the Act declares a policy to "encourage" collective bargaining. "Encourage" does not mean to force; it does not mean to override the employees' wishes, or to guess at their wishes when they are there to vote on it themselves.

CONCLUSION.

We submit that for the reasons stated, the petition for writ of certiorari to the Circuit Court below should be granted.

Respectfully submitted,

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